IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

M/S.MAHAVEER OIL INDUSTRIES VS C.T.O.BARMER
(1) S.B.SALES TAX REVISION PETITION NO.519/2005.

M/S.MAHAVEER OIL INDUSTRIES VS C.T.O.BARMER
(2) S.B.SALES TAX REVISION PETITION NO.520/2005.

M/S.MAHAVEER OIL INDUSTRIES VS C.T.O.BARMER
(3) S.B.SALES TAX REVISION PETITION NO.521/2005.

M/S.MAHAVEER OIL INDUSTRIES VS C.T.O.BARMER
(4) S.B.SALES TAX REVISION PETITION NO.522/2005.

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DATE OF ORDER :- February 15,2007.

P R E S E N T

HON'BLE MR.JUSTICE PRAKASH TATIA.

Mr.Dinesh Mehta and Mr. R.Mehta, counsel for the petitioner.
Mr.Anil Bhandari, counsel for the Revenue -non-petitioner.

REPORTABLE

BY THE COURT :-

Heard learned counsel for the parties.

Brief facts of the case are that petitioner is a Registered Dealer registered under the Provisions of the Rajasthan Sales Tax Act,1994. For the year 1994-

95, 1995-96, 1996-97, and 1998-99 and regular assessment orders were passed on different dates. The dates and details of the above orders are not relevant because of the reason that those original assessment orders are not under challenge in these revision petitions.

After the above assessment orders the proceedings under Section 30 of the Act of 1994, on the ground of escaped assessment were initiated against the petitioner for all these four assessment years. For this purpose notices were issued to the assessee by the Assessing Authority in the month of June 2000. Admittedly notices for initiation of proceedings under Section 30 of the Act of 1994 were within limitation as provided under Section 30(3) of the Act of 1994.Separate Assessment Orders were passed by the Assessing Authority for above four assessment years under Section 30 on 1st August 2000. Assessee being aggrieved against the order dated 1st August 2000 preferred four separate appeals before the Deputy Commissioner (Appeals) Jodhpur which were decided

by the learned Deputy Commissioner(Appeals) Jodhpur vide separate orders dated 31st August 2001. The Appellate Authority after giving some relief to the assessee remanded the matter back to the Assessing Authority for passing fresh assessment orders about tax liability of the assessee.

According to the petitioner the Assessment Order could have been passed by the Assessing Authority after remand only within a period of two years from the date of receipt of the order of the Appellate Authority which is the limitation provided for passing the assessment order in pursuance of remand order under Section 29 (8)(b) of the Act of 1994. That limitation expired on 5th November 2003. The Assessing Authority itself was of the view that period for passing assessment order is two years only and that period is to expire on 5th November 2003,therefore, Assessing Authority sought extension of time from Commissioner Commercial Taxes under Section 29(8)(b) of the Rajasthan Sales Tax Act,1994.The Commissioner, Commercial Taxes,Jaipur,

vide its order dated 11st July 2003 extended the period for passing the assessment order within further period of six months by exercising power under Section 29 (8)(b). The Assessing Authority therefore, only because of the fact that time was extended by the Commissioner, Commercial Taxes, could pass order of Assessment on 16th February 2004. In the assessment order also the Assessing Authority clearly mentioned that the period to decide the matter has been extended by the Commissioner under Section 29 (8) (b), therefore, the Assessing Authority can pass the order of assessment. In sum and substance according to assessee, the revenue's own case was that the assessment orders have been passed in extended period under section 29(8)(b) and otherwise it would have been barred by time.

The petitioner preferred appeals to challenge the orders of the Assessing Authority dated 16th February 2004,passed after remand by preferring appeals before the Deputy Commissioner (Appeals) Jodhpur. In appeals the petitioner took specific objection that

extension of time granted by the learned Commissioner, Commercial Taxes vide order dated 11th July 03 in all these cases is absolutely null and void, as has been passed in violation to the statutory requirement under Section 29 (8) (b). According to the petitioner the Commissioner could have extended the period of limitation for passing assessment order but he could have done so after giving opportunity of hearing to assessee and by passing reasoned order. According to petitioner a bare perusal of the oder dated 11th July 2003 clearly reveals that order extending period of limitation passed under Section 29(8)(b) is not reasoned order. Admittedly no notice was given to the assessee by the Commissioner before passing order dated 11th July 2003. According to the learned counsel for the petitioner, this Court in case of CTO Spl.Circle Udaipur vs Hindustan Zinc Ltd 1992 (85) STC 142 held that the order of extension of time under section 29 (8)(b) of the Act of 1994 can be passed after notice to the assessee and order should be reasoned and reasons must come out from the order itself. The said

objection of the petitioner was rejected by the Deputy Commissioner Appeals while dismissing all four appeals vide order dated 22.12.2004 on the ground that the petitioner- appellants had knowledge of the order of extension of time at least from 19th July 2003 but he did not challenge the said order of extension dated 11th July 2003 till the Assessment order was passed and has challenged the order in appeal. The Appellate Authority was also of the view that objections raised by the appellant petitioner is technical in nature.

Being aggrieved against order dated 22.12.2004 of the dismissal of the appeals by the Deputy Commissioner (Appeals), after rejection of the objection of the petitioner about limitation within which assessment order could have been passed by the Assessing Authority, the appellant petitioner preferred appeals before the Tax Board, Ajmer. The Tax Board, Ajmer, dismissed the petitioners appeal vide common order dated 6.9.2005 and also rejected petitioners said objection on the ground that the order passed by the Commissioner Commercial Taxes is reasoned order

and also took the view that the appellant failed to take action in time against the order of extension of time.

The contention of the learned counsel for the petitioner with full vehemence is that once proceedings under Section 30 of the Act of 1994 started and assessment order has been passed under Section 30 on the ground of escapement of assessment and thereafter appeal is preferred and Appellate Authority remanded the matter to the Assessing Authority then Assessing Authority can pass assessment order only within the period of two years as provided under Section 29(8)(b) and no assessment order can be passed after expiry of two years. According to the learned counsel for the petitioner if the order of the Commissioner dated 11th July 2003 goes then Assessment orders passed by the Assessing Authority on 16th February 04 will also go.

According to the learned counsel for the petitioner, the provisions of Section 30(3) which provides limitation for initiation of proceedings for assessment in case of escaped assessment as well as limitation for

completion of proceedings by passing assessment order is not applicable in case where Appellate Authority passed the order of remand in case where original proceedings were initiated under Section 30 of the Act of 1994 and for passing assessment order, limitation will be as given in Section 29(8)(b). Learned counsel for the petitioner submitted that in a case of Shiv Ratan vs CTO Bikaner WLC (Raj) 1993(2) page 374 in an identical facts and circumstances of present case where the matter was remanded by the Revisional Authority to the Assessing Authority and when notices were issued by the Assessing Authority under Section12 of the Act of 1954, (under the Act which was applicable at that time) this Court took the view that in fact proceedings are under Section 10(b)(2) and not under Section 12.

Learned counsel for the Revenue submitted that firstly, in the facts and circumstances of the case, if no notice was given to the petitioner before passing the order of extension of time by the Commissioner under Section 29 (8)(b), it has not resulted into any

prejudice to the petitioner because of the reason that the Original Assessment Order was passed by the Assessing Authority and when proceedings under Section 30 were initiated the plea of the petitioner was accepted with respect to levy of tax on net sale and therefore, by the ultimate result petitioner has not suffered any prejudice. In view of above, the petitioners' appeals against the order of Assessing Authority dated 16th February 2004 itself were misconceived.

Learned counsel for the Revenue further vehemently submitted that since at relevant time the other appeals in relation to the same legal issue were pending before the Tax Board,therefore, the Assessing Authority sought extension of time to avoid contradictory orders and for that purpose he submitted application to the Commissioner under Section 29(8) (b) and in view of the reasons mentioned and which were noticed by the Commissioner which is apparent from the order dated 11th July 2003, it cannot be said that the order is not reasoned order.

It is also submitted that admittedly original assessment orders passed under Section 29 were not under challenge before either the Assessing Authority as original assessment order could not have been challenged in the proceedings under Section 30 of the Act of 1994. Appellate Authority decided the appeals vide order dated 31st August 2001 and remanded the matter to the Assessing Authority in the appeals which were preferred to challenge the order passed under Section 30 and remand order was passed in those appeals arising out of proceedings under Section 30, therefore, proceedings after remand order passed by the Appellate Authority, neither the matters could have been converted into proceedings for regular assessment under section 29 nor it has been converted in the proceeding under Section 29 by operation of law. According to learned counsel, even if the revenue proceeded under assumption that the authority has the power under Section 29 (8) (b) only, which in fact and law is incorrect, and the authority had power under Section 30, it is mere exercise of

power by the authority under wrong provision of law and therefore, it is not a case of inherent or otherwise lack of jurisdiction of authority who has passed the order of assessment after remand. It is not in dispute that Assessing Authority had jurisdiction to pass the order under the Act, may be under Section 29 or under Section 30. According to the learned counsel for Revenue, once the proceedings started under Section 30, the Assessing Authority has power to look into the record and make further enquiry as Assessing Authority may consider necessary and pass the Assessment order. Therefore, Assessing Authority has been given powers under Section 29 to pass regular Assessment order whereas under Section 30 the Assessing Authority has been given power to pass assessment order under Section 30 itself but that is only when proceeding is initiated within the ambit of Section 30 only. It is no where mentioned in these two sections that proceedings under one section will be governed by the provisions of another section.

Learned counsel Shri Rajendra Mehta also

assisted the Court and vehemently submitted that the limitation provided by Section 30(3) is; initially for initiation of proceedings under section 30 of the Act and thereafter for its completion. Once the proceedings started within statutory period of limitation under section 30 of the Act by the Assessing Authority it has to be completed within the period provided under section 30(3) of the Act of 1994. Once the assessment order is passed by the Assessing Authority under section 30, nothing remains to be done by Assessing Authority under section 30 of the Act of 1994. It is also vehemently submitted though appeal lies to challenge the order of Assessing Authority passed under section 30 and if the appellate authority set aside the assessment order passed under section 30 by the Assessing Authority and remands the matter to Assessing Authority, and thereafter the Assessing Authority passes the assessment order then order is not under section 30 but can pass order under section29 of the Act of 1994. It is also submitted that bar of limitation as provided under section 30(3) of the

Act of 1994 for initiation of proceeding under section 30 of the Act of 1994 alone has been lifted by the second part of section 30(3) which applies to cases where fresh proceedings is required to be taken by the Assessing Authority in pursuance of order of appellate authority as otherwise by the time appellate authority passes any order or issue any direction or need arises to initiate proceeding under section 30 of the Act by issuing notice under section 30(1) of the Act of 1994 the period of limitation for initiation of proceedings under section 30 may expire. To meet with this eventuality the bar of limitation ***only for initiation of proceedings has been lifted*** by the same section i.e. section 30(3) of the Act of 1994. By this, the Assessing

Authority gets the jurisdiction to initiate proceedings under section 30 of the Act of 1994 in the cases for limitation for initiation of proceedings under section 30 has expired. The limitation for completion of assessment in such cases is provided under section 29(8) only and by the limitation provided for

completion of assessment after remand has not been lifted by the second part of Section 30(3) of the Act otherwise there will be no limitation for passing assessment order by the Assessing Authority in such cases.

I have considered the submissions of the learned counsel for the parties and perused the orders referred above.

Firstly it was contended that the Assessing Authority as well as the Addl. Commissioner, Commercial Taxes themselves were of the view that the limitation as given in Section 29(8)(b) is applicable. For this fact it is relevant that facts are not in dispute that notice issued in the month of June 2000 to the petitioner for all these 4 Assessment years, was issued under Section 30 of the Act of 1994 and, it is also admitted case of the petitioner that order was passed on 16th February 2004 by the Assessing Authority under Section 30 of the Act of 1994. It is also admitted that assessee preferred appeals to challenge the order dated 16th February 2004 and remand order was

passed by the Appellate Authority on 22nd December 2004 in the background of those facts and under the proceedings originally initiated by issuance of notice under Section 30 in the month of June 2000. It is true that after remand order dated 22nd December 2004, the Assessing Authority sought extension of time from the Commissioner Commercial Taxes, Jaipur under section 29(8)(b) and in view of the order dated 11th June 2003 passed by the Commissioner, that he also exercised power under Section 29(8)(b). It is also true that the Assessing Authority mentioned in the order dated 16th February 2004 that there was limitation for deciding the matter and that is 2 years only but the commissioner has extended the period of limitation for deciding the matter, therefore, the order is passed within limitation. The appellant challenged the order of extension of time for the first time in appeal and that objection was rejected by the Deputy Commissioner Appeals as well as by the Tax Board and that rejection admittedly not on the ground that there was no need to seek extension of time by the Assessing Authority in

view of sub-section (3) of Section 30 of Act of 1994 which provides that period of limitation for decding the assessment under Section 30(3) shall not be applicable for passing assessment orders in case matter has been remanded by the Appellate Authority. The question arise whether this Court while exercising power under the revisional jurisdiction can look into a plea taken by the revenue in defence in the revision petition of the assessee that the Assessing Authority had power to pass assessment order and for that there was no period of limitation ? In my opinion, this is a pure question of law in the facts of these matters. The power of revision given by Section 86 of the Act of 1994,empowers the High Court to entertain and decide the revision petition in case controversy involves a question of law. The petitioners plea was rejected by the two appellate authorities about jurisdiction of the Assessing Authority in passing the order beyond period of two years from the date of communication of order to the Assessing Authority which was passed by the Appellate Authority. For this purpose assessee is required to satisfy even to

revisional authority that even if the order sought to be challenged in this case which is the order passed by the Commissioner Commercial Taxes is set aside then the order passed by the Assessing Authority shall be beyond the statutory period of limitation. The order otherwise within limitation, cannot be set aside on the ground that it purports to have been passed beyond the assumed wrong provision of law by the authority whereas under legal provision actually applicable, the authority could have passed the order on the date on which it was passed. Therefore, in fact the plea taken by the Revenue is inherently involved in the revision petition of the petitioner itself. Therefore, if the Revenue is successful in showing that if it is held that even the order of extension of period of limitation passed by the Commissioner under Section 29 (8) (b) is illegal or void, the assessment order is not barred by any law, the petitioner cannot succeed in these revision.

Therefore, question is that what is the period within which assessment order could have been passed by the Assessing Authority in present facts? The scheme

of the Act of 1994 separately provides that the Assessing Authority shall have power to pass Assessment Order in regular way under Section 29 of the Act of 1994 after the returns of that year have became due (Section 29) and for this purpose the assessee is required to submit returns in time as per Section 26 before the Assessing Authority. Whether returns filed or not, the Assessing Authority can proceed to decide the case for assessment of assessee. Complete and elaborate procedure for regular assessment is given in Section 29 of the Act of 1994 itself and not elsewhere. As per sub-section (4) of Section 29, if the Assessing Authority on scrutiny, is satisfied that the returns submitted by the dealer are correct and complete, may assess the tax on the basis of such returns and where Assessing Authority is not satisfied he may hold enquiry as provided by sub-section (5) of Section 29 and is required to assess the tax under sub-section (6) or sub-section (7) of Section 29. Such assessment orders can be passed within period as provided under Sub-section (8) (a), and (aa)

of Section29 itself. Therefore, it is clear that for assessment of tax regular procedure with it's limitation has been given separately and completely under section 29 itself. In addition to above even how the assessment matter will be dealt with by the Assessing Authority if the assessment order is challenged by preferring appeal and / or further appeal or in Court and matter is remanded to Assessing Authority. For that also limitation for completion of assessment is provided under Section 29 itself in sub-clause (b) of Section (8) of Section 29.

Controversy in present revisions is about limitation for completion of assessment, when the original assessment order which was passed not under Section 29 but was passed under Section 30 of the Act of 1994. Period for completion of assessment by the Assessing Authority for the cases under Section 30 is separately given in sub-section (3) of Section 30 of the Act of 1994.

Therefore, first it is essential to look in to Section 29(8) (a) and (b) of the Act of 1994.

Sub-section 8(a) of Section 29 is as under :-

> "(8)(a) No assessment order under **this section** shall be passed after the expiry of two years from the end of the relevant assessment year or one year after coming into force of this Act, whichever is latter; however, the Commissioner may for reasons to be recorded in particular case may extend such time limit by a period not exceeding six months."

Sub-section 8(b) of Section 29 is as under :-

> "(b)Notwithstanding anything contained in sub-section (a),where an assessment order is passed in consequence of or to give effect to , any order of an appellate authority or the Tax board or a competent court, it shall be completed within two years of the communication of such order to the assessing authority; however, the Commissioner may for reasons to be recorded in writing , extend in any particular case,such time limit by a period not exceeding six months."

Sub-clause (a) of sub-section (8) of Section 29 prescribed the limitation for passing Assessment Order under "this section" obviously means under Section 29 of the Act of 1994. The words "under this section" are significant as these words restrict application of period of limitation to the orders of assessment passed under

section 29 alone. The sub-clause (b) of sub- section (8) starts with words "notwithstanding any thing contained in sub-clause (a) ....." and makes exception to the limitation prescribed by Sub- clause (a) of sub-section (8) of Section 29 only. In sub- clause (b) of Sub-section (8) of Section 29, it is not provided that "Not withstanding anything contained in sub-clause (a) or in sub-section 3 of section 30". When sub-section (b) specifically extends the period of limitation which has been restricted by sub-clause (a) of Section 8 then by this the limitation prescribed by other section of this Act either for initiation or for completion are not affected nor can be governed.

The above view finds support from the language of sub-section (3) of Section 30 of Act of 1994, therefore, it will be appropriate to quote here the Section 30 in entirety :-

> 30.**Escaped assessment.-**(1)An assessment -(a) of a person who is liable to get registration but has not got himself registered; or
> (b) in which , for any reason, the levy of tax or any fee or sum payable under the Act has been escaped wholly or in part; or

(c) wherein tax has been wholly or in part un-assessed or under assessed in any way or under any circumstances,

shall be deemed an escaped assessment and the assessing authority shall on the basis of the material on record or after making such enquiry as it may consider necessary, complete such assessment within the time limit provided in sub-section (3).

Explanation:-

The assessment under this section shall not include that part of business which has already been assessed under Section 29.

(2) Where the commissioner or Deputy Commissioner (Administration) has reason to believe that a dealer has escaped assessment to tax in any manner provided in sub-section (1), he may at anytime, subject to the time limit specified in sub-section (3), either direct the assessing authority to assess the tax or the fee or other sum or himself proceed to assess the same.

(3)No notice under sub-section (1) and (2) shall be issued in respect of any escaped assessment for any year after the expiry of five years and no assessment under the said sub-section shall be completed after the expiry of eight years, from the end of the relevant assessment year; but **this limitation** shall not be applicable to any assessment to be made in consequence of, or to give effect to, any finding or direction contained in order passed by an appellate authority or the Tax Board or a competent court."

Sub-section (3) of Section 30 starts with language " no notice of sub-section 1 and 2 shall be issued in respect of any escaped assessment for any year ....." Therefore, it prescribed limitation for initiation of proceedings under sub-sections 1 and 2 of section 30 alone. The sub-section 3 of section 30 further provides that "no assessment **under the said sub-sections** shall be completed after expiry of 8 years....." Therefore, sub-section (3) of Section 30 further prescribed period within which assessment order is required to be passed under sub-section 1 and 2 of Section 30. (Separate limitation is provided for assessment order under Section 29). Thereafter it has been provided "but **this limitation** shall not be applicable to any assessment to be made in consequence of or to give effect to, any finding or direction contained in order passed by an Appellate Authority or Tax Board or a Competent Court." Here also the exception to the limitation above in sub-section (3) of Section 30 as prescribed for initiation as well as for completion of assessment under Section 30

has been lifted by specifically mentioning "this limitation" shall not be applicable if "any assessment to be made in consequence of, or to give effect to, any finding or direction contained in order passed by an appellate authority or Tax Board or a competent court". It is significant that in sub-section (3) of Section 30 provision like as provided in sub-clause (b) of sub-section 8 of Section 29 has not been provided for extension of time for making assessment after remand order by the order of the Commissioner. The obvious reason and difference is that in sub-clause (b) of sub-section 8 of Section 29 outer limitation has been given for passing assessment order even in cases where assessment is needed because of remand order in assessment proceedings under Section 29 whereas in cases, the assessment is required because of order of remand or direction etc. of appellate authority, the Tax Board or the court, initially arising from proceedings under Section 30, there is no outer limit for passing assessment order as has been lifted by latter part of sub-section 3 of Section 30. Here also it is not provided

that only the limitation provided for initiation of proceedings under sub-section (1) and (2) restricted by first part of sub-section (3) of section 30 alone has been lifted. The first part of sub-section (3) of Section 30 prescribes two limitations, one for initiation of proceedings and another for passing assessment order. The limitation prescribed by Section 30 for initiation and for its completion cannot be bifurcated for the purpose of latter part of sub-section (3) of Section 30 by which limitation only for completion of the proceedings under Section 30 stands lifted and to make the matter to be governed by sub-clause (b) of sub-section (8) of Section 29. The words "this limitation shall not be applicable to any assessment made" lifted the bar against making assessment within prescribed period of limitation in case assessment is needed after remand order, is clear from the bare reading of sub-section 3 itself and there is no ambiguity. Therefore, from reading of these two sections : section 29 (8)(b) and section 30(3) of the Act of 1994 it is clear that the limitations for two matters have been prescribed separately.

Simply because of fact that there will be no outer limit for deciding the matter after remand order in the proceedings arising out of section 30, the limitation cannot be imposed by judgment for competition of assessment.

Further scheme for assessment under Section 30 is relevant because admittedly in present case assessment order was passed under Section 30 of the Act of 1994 and was set aside in appeal and the matter has been remanded for passing fresh assessment order to the Assessing Authority. Inspite of all care by the Assessing Authority in assessing the tax liability of registered dealers or other dealers and even if assessment order is passed after holding enquiry under section 29 (5) or (7) there may be cases of escaped assessment of tax, therefore, separate provision has been made by enacting Section 30 for assessment of escaped assessments. It is provided by sub-Section (3) of Section 30 read with sub-section (1) of Section 30 that in the cases as given in sub-clauses (a) (b) and (c) assessment shall be deemed to

be an escaped assessment and the Assessing Authority may issue notice to the dealer whether registered or not, within the period of five years from the end of relevant assessment year as provided in sub-section (3) of Section 30. The proceeding initiated in time required to be completed in time that is within eight years from the end of relevant assessment year.

In the present case as the facts are clear that original assessment order was passed which is not in dispute was passed under Section 29 and that was passed on 27th December 1995. The proceedings under Section 29 came to an end with the passing of the order dated 27th December 1995 and after that nothing remained to be done under Section 29 of the Act of 1994. In present case, fresh proceedings under Section 30 was initiated by the Assessing Authority and that was admittedly initiated within limitation which is provided under Section 30 (3) of the Act of 1994.

Any order passed under the Act, including the assessment order passed under Section 29 or it may be

under Section 30 is appealable under section 84 of the Act of 1994. If appeal is preferred to challenge the order of assessment passed under Section 29 or under Section 30 of the Act, the Appellate Authority may pass any order as provided in sub-section (7) of Section 84 which includes the order to remand the matter to the Assessing Authority. Further appeal against the order of the appellate authority lies to the Tax Board under Section 85 and thereafter revision lies to High Court against the order of the Tax Board. Not only this but any mistake in any order can be corrected by invoking powers under Section 37 of the Act. Therefore, the order under section 29 is subject to the order passed by the Appellate Authority if challenged under section 37,84 and 85 of the Act of 1994, is final. Admittedly the order of assessment passed in the case of non-petitioner assessee for assessment of tax under section 29 has became final and is not being sought to be rectified under section 37 or sought to be altered in appeal or revision. What has been done after attaining finality of the order of

original assessment in the case of assessment of petitioner, the Assessing Authority was of the view that still some assessment has escaped and, therefore, the Assessing Authority issued notice to assessee under Section 30 and that was within the period prescribed for initiation of proceedings under sub-section (3) of Section 30. It is not in dispute that two order, one under Section 29 and another under Section 30 may and can remain in force together and it is not required that if a case is made out under section 30, the original assessment order passed under section 29 will have to be set aside and the Assessing Authority will pass fresh assessment order under section 29 of the Act of 1994 as is done in the case when orders are reviewed when review lies. Section 30 is departure from procedure of review.

The limitation for completion of assessment is provided separately under section 29(8)a,(aa) and (b) and that is for assessment under Section 29. Whereas limitation for completion of assessment under Section 30 is provided separately under Sub-section (3) of

Section 30 of the Act of 1994. Limitation for completion of assessment under Section 29, when matter is remanded by the appellate authority is given in sub-clause (b) of Sub-section (8) of Section 29 separately where the assessment is required in consequence of, or to give effect to any direction or direction contained in order passed by an appellate authority or Tax Board or competent court. Time given under sub-clause (b) of Sub-section (8) of Section 29 for completion of assessment after remand can be extended by the commissioner for the reasons to be recorded and that extension may be up to period of six months only. Here is the material distinction between Section 29(8)(b) and Section 30(3).

There is provision for appeal against order passed by the competent authority including against both the orders, under section 29 and section 30 and for all appeals provision is common and is under Section 84 only. Therefore, whether it is order of assessment under Section 29 or Assessment under Section 30 or order passed by any Competent Authority under the

Act which includes even order passed by the the Incharge of a check post there is one provision to challenge it. Making of all orders appealable under one Section i.e. under Section 84 which were passed in separate and independent provisions of the Act of 1994, cannot change the nature of the original order passed in particular section or under specific provision. Even after the Appellate Authority passes any order then that order is in the proceedings originally initiated and is in continuation of said original proceedings. Even if the order under challenge is set aside by the Appellate Authority by invoking power under Section 84 of the Act of 1994 and matter is remanded to the Assessing Authority for fresh order then Assessing Authority can complete and pass the Assessment order etc. only under the provisions in which originally proceedings were initiated. Neither the order passed under section 29 stands altered or stands converted in proceedings under Section 30 nor the proceedings under Section 30 stand converted into proceedings under Section 29 merely because of reason of remand

by the Appellate Authority or Tax Board or by Courts order. However, in case in the light of directions of the Appellate Authority or Court separate proceedings is required to be taken against any person then to give effect to the order of the Appellate Authority or in consequence of the order of the Appellate Authority, fresh proceedings may be initiated(if permissible) and that may be under any of the provisions of law under the Act of 1994 depending upon the order of Appellate Authority or the Court but original proceedings initiated and subjected to the appeal cannot stand converted into any other proceeding automatically merely because of order of remand passed by the Appellate Authority.

One of the judgments of this Court relied upon by the counsel for the petitioner, of this Court was delivered in the case of Shiv Ratan vs. CTO Bikaner Division (Anti Evasion) and others reported in 1993 Vol2 W.L.C.373. In that case the assessee filed its returns of its sales before the Commercial Taxes Officer Special Circle, Jodhpur, who had the jurisdiction at the

relevant time over the assessee, as the turn over of the assessee firm exceeds to Rs.5 lacs. Before the Commercial Taxes Officer Special Circle, Jodhpur could proceed with the Assessment of the assessee, the Assistant Commercial Taxes Officer (Anti Evasion), Bikaner, seized the books of account of the assessee firm and detected that the books of account maintained by the assessee are incomplete in respect of purchase of raw material and the quantity of the final products. It was further detected that certain entries in the books maintained by Hari Ram Chakiwala with regard to the business of the assessee did not find place in the assessee's books of account. The Assistant Commissioner Commercial Taxes (Anti Evasion) by its order dated 6th February 1972 then made best judgment assessment on the basis of material available on record. The assessee dealer preferred appeal before the Deputy Commissioner (Appeals), Commercial Taxes, Bikaner, but that was dismissed vide order dated 12th June 1974. The assessee preferred revision petition before the Board of Revenue,

Rajasthan, Ajmer. The Revision petition was also dismissed by the Board of Revenue by order dated 27th February 1978. Therefore, the assessee moved reference application under Section 15(1) of the Act 1954 before the Board of Revenue for referring the questions of law mentioned in the application for opinion of the High Court. The Board of Revenue by its order dated 27th October 1978 referred two questions of law for opinion of High Court which are as under :-

> "1.Whether on the admitted facts and circumstances when the Commercial Taxes Officer, Special Circle, Jodhpur, exercised his jurisdiction as the Assessing Authority and received the return for the period under dispute, can the Assistant Commercial Taxes Officer (Anti Evasion) assumes the jurisdiction as the Assessing Authority without any order under rule 52 of the Rajasthan Sales Tax Rules?
>
> (2)Whether the Assistant Commercial Taxes Officer (Anti Evasion), has any jurisdiction to act as the Assessing Authority when he himself is alleged to have seized the books of accounts and acted as the prosecutor ?"

The assessee in above case also submitted

reference application before this Court to agitate other questions. The Division Bench of this Court decided all the references vide order dated 6th August 1985. The Division Bench of this Court held that the ACTO (Anti Evasion) Bikaner could not exercise jurisdiction over the dealer assessee as the Assessing Authority as the CTO Special Circle Jodhpur exercised jurisdiction over him as its turn-over in respect of the relevant accounting years was more than Rs.5 lacs. The Division Bench of this Court held that the order passed by the ACTO (Anti Evasion) Bikaner was without jurisdiction. While setting aside the order of the ACTO (Anti Evasion) Bikaner the Division Bench neither remanded the case to the Assessing Authority nor gave direction to the Assessing Authority to assess the petitioner but the Commercial Taxes Officer Special Circle Jodhpur issued notice to the assessee under Section 10(4) read with section 10-B(2) of the Rajasthan Sales Tax Act 1954(which was in force at the relevant time). The partners of the assessee firm as well as legal representatives of one of the partner of the assessee

firm instead of appearing before the Commercial Taxes Officer, Special Circle,Jodhpur, challenged the notice issued by the said authority by filing writ petition. The said writ petition was decided by this Court by the judgment delivered in case of Shiv Ratan (supra). This Court in the said Shiv Ratan's case held that the notice issued by the Assessing Authority to the petitioners are not in consequence of the order passed by the Appellate Authority or in consequence of the order passed by the Court because of the reason that expression " in consequence of the order" means the result of or the out-come of the order and it must be a conclusion that results froma logical sequence of the order passed by the High Court. It requires that it will directly flow from the revisional order and should not be remote, distant and incidentally connected with the revisional order and a consequence of it. The facts of Shiv Ratan's case as well as ratio decendi in Shiv Ratan's case makes it clear that in the Shiv Ratan's case there was no remand order and there was no order of Appellate Authority or the Court to the

Assessing Authority to initiate proceedings against assessee or any other person under any specific provisions of law. In that situation the notices were quashed by the High Court. Since there was no initiation of proceedings under Section 12 of the Act under which at the relevant time under the Act of 1954 the Assessing Authority had jurisdiction to assess the petitioner on the ground of escaped assessment and the proceedings which was initiated initially by the CTO(Anti Evasion) was held without jurisdiction and was quashed. Therefore, the judgment of this Court delivered in Shiv Ratan's case has no application to the facts of present case nor it lays down that the proceedings initiated under the regular assessment if is quashed by appellate authority and the Assessing Authority by drawing any inference from the order of the appellate authority but that inference is of Assessing Authority himself the initiation of proceedings by Assessing Authority can be treated to be proceedings initiated in consequence of or to give effect to any finding or direction contained in an

order passed by appellate authority or the Court.

It is clear from the discussion above, that proceedings under Section 29 are proceedings for assessment of tax in regular manner after taking care and finding out whether the assessee has avoided tax or have not furnished correct particulars and after all other relevant enquiries by which proper assessment order can be passed. Even after said assessment order becomes final even then escaped assessment can be assessed on finding grounds as mentioned in sub-clause (a) (b) and (c) of Section 30 then that proceedings is independent proceedings. As per language of Section 30 as a whole it is not peri materia with the power of review as provided in provisions of Civil Procedure Code which provides review of the order and setting aside of the original order so as to reopen the original proceedings itself and thereafter rehearing the original proceedings. Section 30 of the Act of 1994 gives the basis for which the Assessing Authority can initiate proceedings under Section 30 and thereafter this section itself very clearly provides that

".....Assessing Authority shall, on the basis of material on record or after making such enquiry as it may consider necessary, complete such assessment within time limit provided in Sub-section (3). Therefore, it is clear that Assessing Authority has been given power by Section 30 itself to pass assessment order and it has not been provided that in case escaped assessment is found by the Assessing Authority, the Assessing Authority shall reopen the original assessment and shall proceed to decide the assessment of the dealer as per the provisions of Section 29.

In view of the above admitted fact of issuance of notice under Section 30 to the assessee and passing of the order by the Assessing Authority under Section 30 and order of remand passed by the Appellate Authority in proceedings arising out of Section 30 if the Assessing Authority proceeded under assumption that he is to decide assessment of the petitioner by virtue of powers available to Assessing Authority under Section 29 (8) (b), the Assessing Authority committed mistake but it

cannot affect the legality of the order passed by the Assessing Authority because of the reason that under the same law i.e. Rajasthan Sales Tax Act 1994 the Assessing Authority has power to pass the order under Section 30 itself and it is not a case of total lack of jurisdiction of the Assessing Authority in passing the assessment order. Rather to say order has been passed within jurisdiction and therefore because of mentioning of powers under Section 29(8)(b), the order passed by the Assessing Authority has not been effected in any manner.

Learned counsel for the assessee relied upon few judgments which arose in Income Tax Act. In the case of *Gauri Shankar Choudhary vs. Additional Commissioner of Income-Tax and another* reported in *234 ITR (1998) 865 (Patna)*, the facts were that there was a case before the Settlement Commission in which the assessee concern was "S", a Hindu undivided family. In the said proceeding, the Settlement Commission had found that there was a complete partition in the Hindu undivided family of "S" as

between him and his sons on November 9, 1977, and the business carried on thereafter belonged to the association of persons of the Hindu undivided families of three separated sons of "S" including the petitioner. The Settlement Commission in the said proceedings directed the assessing officer to take action as per law to bring this income to tax in the relevant assessment year. A notice under Section 148 of the Income Tax Act, 1961 was issued to the petitioner who was member of Hindu undivided family and whose assessment for the assessment year of 1981-1982 was sought to be reopened by the assessing officer. Said petitioner, member of Hindu undivided family, challenged the notice and the Division Bench of Patna High Court held that so far as the assessment year 1981-1982 is concerned, the period of limitation prescribed was ten years for issuance of notice under Section 148 of the Income Tax Act. Said period expired on 31.3.1992. The notice issued on 22.1.1996 was found to be barred by limitation. The Division Bench of Patna High Court held that the order passed by the Settlement Commission

could not be construed to be an order passed under this Act by way of appeal, reference or revision so as to necessitate reassessment for the assessment year 1981-1982. The Division Bench of Patna High Court further held that Sub-section (2) of Section 150 of the Act makes it quite clear that the provisions of sub-section (1) shall not apply in any case if the order which was subject matter of the appeal, reference or revision could not have been made by reason of any other provision limiting the time within which any action for assessment, reassessment or re-computation may be taken.

From the above facts, it is clear that the assessing officer for the first time initiated proceedings against said petitioner of the above case by issuing notice under Section 148 of Income Tax Act by taking help of order passed by the Settlement Commission wherein said petitioner was not party and further, there was no assessment order for the assessment year 1981 which had been taken in appeal, reference or revision before any authority under the Act (the Income Tax Act,

1961). Therefore, that was a case of two separate proceedings – one initiated against the assessee "S" a Hindu undivided family and the order passed against said Hindu undivided family was challenged and therein there was direction of the Settlement Commission to take action as per law to bring this income to tax in relevant assessment years. It was not a case as presently we are dealing because of the simple reason that in this case, the order which was passed by the Assessing Authority under the provisions of the Act of 1994 itself was challenged by the assessee and the matter was remanded by the appellate authority and there is a direction to the Assessing Authority to complete the assessment and that assessment can be made only under Section 30 and by no stretch of imagination, it can be an order of assessment under Section 29 and pertinent fact is that the order of assessment under Section 29 has already been passed by the Assessing Authority in the proceedings under Section 29 and that order has become final. Therefore, the judgment delivered in the case of Gauri Shankar

Choudhary (supra) has no application to the facts of the present case, rather in some way, it supports the contention of the revenue.

The other judgments delivered in the cases of (1) Ambaji Traders petitioner. Ltd. v. Income-Tax Officer, Central Circle(III), Nagpur ((1976) Vol.106 ITR 273), (2) Commissioner of Income-Tax v. G.Viswanatham ((1988) Vol. 172 ITR 401) and (3) Parveen Kumari v. Commissioner of Income-Tax and another ((1999) Vol. 237 ITR 330) are also of similar nature and in none of case there was self contained and separate provisions without there being any connection with each other were under consideration and in none of the judgment it has been held that proceedings initiated in one provision if subject to appeal then that is not continuation of original proceedings and can be governed by different provisions of law in the same Act.

So far as the judgment of this Court delivered in the case of Commercial Taxes Officer, Special Circle, Udaipur vs. Hindustan Zinc Ltd(supra), there is no quarrel and in case extension of time for making

assessment is sought by the Assessing Authority, obviously under sub-clause (b) of sub-section (8) of Section29 of the Act of 1994, can be granted after giving opportunity of hearing to the dealer and the order must be reasoned. Since in the present case, the matter is governed by the limitation as provided under Section 13(3) of the Act of 1994, therefore, the above judgment has no application to the facts of the case.

In view of the above discussion, though the order of the Tax Board cannot be upheld on the ground which has been mentioned by the Tax Board and by the Deputy Commissioner (Appeals) but still the order passed by the Assessing Authority has been passed within jurisdiction and has not been passed beyond the period of limitation.

The revision petitions are dismissed.

(PRAKASH TATIA),J.

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